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硕 士 学 位 论 文

WTO 贸易报复机制的缺陷及完善

On the Deficiency and Perfection of the Trade Retaliation

Mechanism of WTO

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内 容 摘 要

WTO 争端解决机制不仅被 WTO 法定为向多边贸易体制提供安全及预见性的一种核心要素,^①而且被视为“WTO 的最独特贡献”和“WTO 皇冠上的明珠”。而作为 WTO 争端解决机制中最有特色的部分, WTO 的贸易报复机制在督促成员间争端解决的执行方面,发挥了重要的作用。虽然 WTO 争端解决机制中的报复措施和 GATT 时期相比,已经有了长足的进步,而且还被视为是乌拉圭回合谈判的重要成就之一,但是,在近十多年的争端解决实践中,贸易报复机制也暴露出了不少缺陷和不足,因此有必要对其进行完善。本文的主要目的就是介绍贸易报复在实践当中出现的一些问题,以及各成员为贸易报复机制的修正所做的努力,以期我国的立法和实践提供帮助。

除引言和结论外,本文主文共分为五个部分:

第一部分从贸易报复措施的发展沿革着手,重点介绍 WTO 贸易报复机制对 GATT1947 第 23 条的改进;

第二部分以现行的 WTO 贸易报复机制的规定和实践为基础,着重分析 WTO 贸易报复制度在价值取向、实体和程序上的不足之处;

第三部分,介绍并评价多哈回合谈判中, WTO 成员对贸易报复规则的改进建议;

第四部分,以第二部分的分析为基础,并结合多哈回合贸易报复机制的改进情况,对 WTO 贸易报复机制的完善提出一些建议;

第五部分,将结合中国的实际,介绍 WTO 贸易报复机制对我国的影响、我国所应采取的立场和我国遭受贸易报复时的应对措施,并对中国实施贸易报复措施的策略进行相应研究。

关键词: 贸易报复机制; 缺陷; 完善

^① WTO1994 年《关于争端解决规则与程序的谅解》第 3 条第 2 款。

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ABSTRACT

The dispute settlement mechanism of WTO is not only being stipulated by DSU as a central element in providing security and predictability to the multilateral trading system,^① but also being deemed as “the most individual contribution of WTO”. And it’s also regarded as the “Pearl on the Crown of the WTO”. As the most characteristic part of the dispute settlement mechanism of WTO, the trade retaliation mechanism of WTO has a vital role to play in inducing compliance with the recommendations and rulings of DSB. Although in comparison with those in GATT, WTO has made considerable progress in the trade retaliation mechanism, and the trade retaliation mechanism of WTO is considered as one of the gigantic achievements of Uruguay Round as well, the trade retaliation mechanism of WTO has also been exposed quite a few drawbacks and deficiencies to the light of day in the past decades of dispute settlement practice. Therefore, it’s necessary for us to make it more perfect. The fundamental purpose of this thesis is to summarize some problems appeared in the practice of the trade retaliation mechanism of WTO, as well as the endeavor made by WTO members in order to perfect the trade retaliation mechanism of WTO, in hope that it can provide some help for the legislation and practice of our country.

With the exception of the preface and the conclusion, the main part of the thesis can be divided into the following five parts:

The first part starts with the development and evolution of the trade retaliation measures, and then places emphasis on explaining the improvements of the trade retaliation mechanism of WTO comparing to article23 in GATT1947.

The second part is based on the current provisions and practices of trade retaliation mechanism of WTO, and then focuses on the analysis of leakages and defects of nowadays trade retaliation mechanism of WTO in its value orientations,

^① 2 paragraph of Article 3 of DSU passed by WTO in 1994.

substantive and procedural parts.

The third part makes introductions and evaluations about the suggestions and proposals for improving the rules of trade retaliation mechanism of WTO by the members in Doha Round.

The fourth part is following the analysis of the second part, as well as considering the proposals made by WTO members in Doha Round, putting forward suggestions for perfecting Trade Retaliation Mechanism of WTO.

The fifth part is on the basis of China's actual conditions, discussing the influence of Trade Retaliation Mechanism of WTO on China, the standpoint and countermeasures adopted by our country when suffering trade retaliation. In addition, it also makes a correlative research on the strategies we should take when executing the Trade Retaliation Measures.

Key Words: Trade Retaliation Mechanism; Deficiency; Perfection

缩 略 语 表

Abbreviations

英文简称	英文全称及中文含义	
WTO	World Trade Organization	世界贸易组织
GATT	General Agreement on Tariffs and Trade	关税及贸易总协定
DSU	Understanding on Rules and Procedures Governing the Settlement of Disputes	关于争端解决规则与程序的谅解
DSB	Dispute Settlement Body	WTO 争端解决机构
UN	United Nations	联合国

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